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ALEXANDER L. STEVAS,
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**IN THE SUPREME COURT
OF THE UNITED STATES**

OCTOBER TERM, 1982

PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,

-VS-

ANNETTE GAIL ALEXANDER,
Respondent.

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI TO THE
MICHIGAN SUPREME COURT**

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COUNTER-STATEMENT OF THE CASE

On March 11, 1977, Respondent killed the deceased, with whom she lived, when his shotgun discharged while she was holding it during the course of a domestic argument. She was tried and convicted of second-degree murder. She has completed the custodial portion of her sentence and is now on parole.

In the minutes prior to the time the gun discharged in this case, the deceased, who was angry with Respondent, had slapped and kicked her, chased her around the house and pulled off her blouse. Respondent, afraid and upset and wanting to keep the deceased away from her and to get out of the house, had gone upstairs to get his gun and was holding it at the top of the stairs, screaming, when it discharged accidentally while slipping out of her hands as she stood there. The shot struck decedent, killing him. Respondent almost immediately sought help, running to a neighbor and asking her to call Emergency Medical Service.

It was Respondent's position at trial that the gun discharged accidentally while she was holding it in self-defense. The trial court's charge to the jury erroneously instructed, however, that "people normally may not be heard to say that they did not intend the natural consequences of their act . . ." Respondent's conviction was reversed by a unanimous Michigan Supreme Court, which found *Sandstrom* [v *Montana*, 442 US 510; 99 SCt 2450; 61 LEd2d 39 (1979),] error in this instruction. *People v Alexander*, 416 Mich 581, 610; ___ NW2d ___, ___ (1982).

As to whether the error here was harmless beyond a reasonable doubt, the Michigan Supreme Court correctly noted that the essential element of intent was directly disputed by Respondent. The Court also stressed "the lack of overwhelming evidence . . . of intent" and the existence of "evidence tend[ing] to corroborate a theory of accident." 416 Mich at 614-615; ___ NW2d at ___ - ___. For these reasons the Court held the error to be not harmless.

REASONS FOR DENYING THE WRIT

Contrary to the statements in the prosecutor's Petition, Respondent's defense placed both her general intent and her specific intent into issue. There was conflicting evidence both as to whether Respondent intended to fire the weapon at all and as to her intent and purpose in firing it if the jury found she fired it intentionally.

For the reasons noted above, the determination of the Michigan Supreme Court that the error here was not harmless is clearly supported by substantial evidence.

This is a particularly inappropriate case for resolving whether a *Sandstrom* error can ever be harmless. The Michigan Supreme Court found that the error here was, in fact, harmful, and Respondent's conviction would, therefore, have to be reversed under either standard.

Further, Respondent has already served the custodial portion of her sentence and is now on parole. She will, in fact, complete her parole in early 1984, before a decision on the merits would likely be rendered by this Court even if *certiorari* were granted. Even if there were a decision finding that *Sandstrom* error can be harmless and was so here, the practical effect in Respondent's case would be virtually nil.

RELIEF

WHEREFORE, the Petition should be denied.

Respectfully submitted,
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Dated: May 17, 1983